HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.3903 of 2006

Dated: March 21, 2006

Between:

Syed Munwar Pasha, S/o. Syed Wazeed Ali,
aged 43 years, Occ: Stage-I Conractor,
R/o.H.No.23-91, Fazal Banda, Badepally,
Jedcherla, Mahabubnagar District.

… Petitioner

And

The Andhra Pradesh State Civil Supply
Corporation Limited, Regd.Office
H.No.6-3-655/1/A, Civil Supplies Bhavan,
Somajiguda, Hyderabad, rep. by its Vice-
Chairman and Managing Director and two others.

… Respondents

Order:

The petitioner, a Transport Contractor of food grains, has filed this Writ Petition seeking Writ of Mandamus to declare the order dated
25-02-2006 passed by the second respondent in Procd.No.Movt.282/2006, as illegal and arbitrary, and further to direct the respondents to continue him as Transport Contractor of food grains till the expiry of his contract period.

2. The first respondent, the Andhra Pradesh State Civil Supplies Corporation Limited, a Govt. company, registered under the Companies Act, 1956, is involved in the business of transportation and distribution of food grains. For transportation of food grains or any other commodity entrusted by the Government from various places within the district and outside the district of Mahabubnagar to various places within the district of Mahabubnagar, the first respondent Corporation has called for tenders for such transportation. In response to the same, the petitioner, a Transport Contractor offered his rates and further on negotiations, the rates offered by the petitioner were accepted and agreement dated
11-08-2005 was entered into by the first respondent Corporation in favour of the petitioner herein with various terms and conditions. The said contract is for a period of one year with effect from
01-08-2005 to 31-07-2006.

3. Vide Movement Order No.Movt.1(955)/2005/Stage-I dated
14-02-2006, the petitioner was directed to transport 15.500 Metric Tonnes of Mill Levy rice from A.P. Warehousing Corporation, Gadwal, to various M.L.S. points within the district of Mahabubnagar.
On 17-02-2006, the authorized representative of the contractor had taken delivery of 310 bags of A.P. Mill Levy Grade-A rice for onward transportation to MLS Point, Wanaparthy. On the ground that the said stock was not delivered at the destination, at MLS Point, Wanaparthy, and the same was diverted to another rice mill, namely, M/s. Katta Industries Rice Mill, the petitioner was issued show cause notice dated

21-02-2006 for suspension of the contract, apart from recovery of double the cost of the commodity, amounting to Rs.2,79,000/-, for which the petitioner has submitted his reply dated 25-02-2006. While admitting that such transportation was undertaken by him, the petitioner has stated in the explanation that he has not authorized his representative for transportation of the rice to the said rice mill. On 25-02-2006, the petitioner has undertaken 260 bags of Mill Levy Grade-A rice for transportation from the State Warehousing Corporation, Gadwal to MLS Point, Pangal. It is stated that the truck left the Warehousing Corporation at 3.25 p.m., but, however, the said stock did not reach the destination point and it was diverted to a rice mill, namely, Katta Industries Rice Mill. Referring to the above said instances, invoking the power under Clause 8(v) of the agreement entered into by the Corporation with the petitioner, impugned order dated 25-02-2006 has been passed, suspending the contract for alleged improper performance and also for violation of the terms and conditions of the agreement.

4. Sri D. Prakash Reddy, learned Senior Counsel appearing for the petitioner submits that so far as transportation on 17-02-2006 is concerned, that is without any knowledge to the petitioner and on coming to know about such diversion, the petitioner himself lodged a complaint with the Police against the driver, in that view of the matter, no action could have been taken against the petitioner. With reference to the transportation dated 25-02-2006, it is submitted that the petitioner has taken delivery at 3.25 p.m. at Gadwal on 25-02-2006 and the same was delivered at the destination point at 6.40 p.m. As much as the contract is confined to delivery and supply only at the MLS Point, petitioner cannot be held responsible for any mis-utilization of the said stock, after the same is delivered at the MLS Point.

5. In response to the notice issued by this Court before admission, respondents have filed counter affidavit stating that the petitioner, having entered into an agreement, violated various conditions of the agreement; in that view of the matter, the contract awarded to the petitioner was suspended, invoking the clause in the contract and that being a contractual obligation, the petitioner cannot question such an order in this Writ Petition filed under Article 226 of the Constitution of India. It is also stated that the petitioner has diverted the stock adverse to the interests of the poor and needy consumers. In that view of the matter, the contract awarded to the petitioner was suspended.

6. Sri D. Linga Rao, learned Standing Counsel appearing on behalf of the

respondents submits that the contractor or his representative, is responsible for the quality and quantity of stocks as taken delivery by him for transportation to destinations, as per the movement instructions issued by the District Manager concerned. He further submits that the petitioner, having undertaken transportation pursuant to award of the contract, cannot disown his responsibility for such diversion of the stocks. He further submits that as per the terms of the contract, the Corporation is vested with an absolute right to suspend the contract during the currency of the agreement in case of diversion of stocks contrary to the movement orders issued by the officer concerned.

7. With reference to the aforesaid matrix, it is relevant to extract sub-clauses III and IV of Clause 8 of the agreement entered into between the parties and the same read as hereunder. -

> III) It shall be open to the Corporation to suspend the transport contract before ordering termination of the transport contract under this sub-clause During the period of suspension the Corporation is at liberty to make alternate arrangement at the risk and cost of the Contractor.
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> IV) The Contractor or his representative(s) is responsible for the quality and quantity of the stocks as taken delivery by him for transportation to the destinations as per the movement instructions issued by the District Manager concerned. The Corporation shall have absolute right to suspend the contract at any time during the currency of the agreement, without any Notice or without assigning any reasons, if the Contractor or his representative(s) is involved in a case diversion of stocks or under Essential Commodities Act or any other Act. The contractor is responsible for any acts of his representatives, Agents, Employees including Truck owner, Driver/Cleaner of the Truck in which stocks are loaded for transportation.

8. From a reading of the contractual terms, it is clear that the petitioner entered into contract with the respondents for transportation of food grains to MLS Points within the district of Mahabubnagar and for transportation from outside to various areas in Mahabubnagar District. With reference to the stock which is taken delivery on 17-02-2006 for transportation, it is the case of the respondents that the said stock was diverted to another rice mill, namely, M/s. Katta Industries Rice Mill. With reference to the show cause notice, the petitioner submitted his explanation. Though he has admitted such movement order, but, however, he disowned the responsibility on the ground that such lapse was without his knowledge. Even with reference to the transportation on

25-02-2006, though it is the case of the petitioner that he has transported and

delivered the stock at 6.40 p.m. on 25-04-2006, however, it is stated in the counter affidavit that the said stock was seized in the aforesaid rice mill at 6.30 p.m. It is further stated that the petitioner is in collusion with the rice miller and the MLS Point incharge who had obtained the acknowledgment for the truck without unloading at MLS Point, Pangal.

9. Though the learned Senior Counsel pointed out certain discrepancies with regard to the timings as stated in the counter affidavit and the entries in the First Information Report, but, however, the same is the matter for enquiry by the competent authority and at this stage, this Court cannot consider the rival pleas and record a finding of fact, in this petition filed under Article 226 of the Constitution of India. From a reading of the contractual terms, it is clear that the Corporation is empowered to suspend the contract during the currency of the agreement, if the contractor or his representative is involved in a case of diversion of stock. Whether the petitioner is involved in such a diversion, and whether the petitioner had delivered the stock at 6.40 p.m. on 25-02-2006, is a matter for enquiry by the competent authority, but, *prima facie*, at this stage, this Court cannot examine the explanation offered by the petitioner on the allegation of alleged diversion of stocks on 17-02-2006 and 25-02-2006.

10. As much as the terms of the contract empower the respondents to suspend the contract as an interim measure, and the impugned order, *prima* facie, is in consonance with the terms of the contract, I do not find any illegality in the impugned order, suspending the contract, which warrants interference of this Court under Article 226 of the Constitution of India.

11. In the result, the Writ Petition is dismissed. No order as to costs. The order dated 28-02-2006, passed by this Court, granting interim suspension, is hereby vacated.

12. As much as it is stated that the contract is valid only upto the end of July, 2006, and security deposit of Rs.8.00 lakhs and a bank guarantee of Rs.11.00 lakhs given by the petitioner is lying with the respondents, I direct the respondents to complete the enquiry and pass appropriate final orders within six (6) weeks from the date of receipt of a copy of this order.

JUSTICE R. SUBHASH REDDY.

March 21, 2006

MRR